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ACT

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,553	12/20/2001	Matthew J. Birdsall	P105 CON 3	6097

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EXAMINER

THALER, MICHAEL H

ART UNIT PAPER NUMBER

3731

DATE MAILED: 01/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
10/029,553

Applicant(s)
Birdsall

Examiner
Michael Thaler

Art Unit
3731



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 20-41 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 20-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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The disclosure is objected to because of the following informalities: The sentence on page 12, lines 17-20 appears to be in error since it indicates that both figure 3a and figure 3b is a cross-section of the section shown in figure 2b after profiling. Appropriate correction is required.

Claims 2-23 have been renumbered as claims 20-41 since claim 19 was the highest numbered claim prior to the preliminary amendment.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the three sided shaped defined in claim 1 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claims 25-27, 29, 30, 33-35 and 38-41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 25, line 1, "wherein 5 the" is not understood. Claim 20 is limited to the embodiment of figure 3B since only this embodiment shows top and bottom sides which are substantially flat and left and right sides

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which are substantially curved. However, this shape is not ellipsoidal as defined in claims 26. In claim 27, it is not clear what "elliptorectangular" means. Claim 33 has a similar problem. Claim 29 is inaccurate since there is no "edge" between the bottom side and the left side of the shape shown in figure 3B. Claims 30, 34, 35 and 41 have similar problems. Claim 38 duplicates part of claim 31, from which it depends. claim 39 has the same problem. Claim 40 contradicts claim 31, from which it depends.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Disclosure in view of Alt et al. (5,843,117). Applicant admits that the stents shown in figures 2A-2C are prior art and regarding claim 1 implies the prior art stents may also have a triangular cross-sectional shape (page 11, line 16 to page 12, line 5). Rounding the corners of the prior art stents in order to facilitate easy movement of the stent through the blood vessel without damaging tissue would have been obvious in view of the Alt et al. teaching of machining the stent to round all of its

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sharp corners apparently for this reason (col. 14, lines 60-62 and col. 15, lines 16-18). As to claim 37, rounding the corners of the admitted prior art stent shown in figure 2C of the application would result in the claimed shape.

Claims 20-36 and 38-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hess et al. (5,545,210). Hess et al. show a stent 1 comprising at least one strut 6. The strut 6 has sides which are flat (as indicated by the straight radial lines in figure 2) which may obviously be considered top and bottom sides since they would be located on the top and bottom of the strut when the stent is oriented in a particular orientation. The strut 6 has sides which are curved (as indicated by the curved lines in figure 2 along the inner and outer circumference of the stent) which may obviously be considered left and right sides since they would be located at the left and right sides of the strut when the stent is oriented in a particular orientation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached on (703)308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are

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(703)305-3590 for regular communications and (703)305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

mht
January 10, 2003



MICHAEL THALER
PRIMARY EXAMINER
ART UNIT 3731